HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.506 of 2007

Between:

The Bureau of Economics and Statistics
Employees Coop. Housing Society Ltd.
represented by its President and another

... Appellants

And

Commissioner for Cooperation and
Registrar of Cooperative Societies,
Hyderabad and others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri M. Ramakanth for
Shri D.V. Bhadram

Counsel for the respondents : Government Pleader for Cooperation

June 25, 2007

Per G.S. Singhvi, CJ

Whether the permission accorded by the Commissioner for Cooperation and Registrar of Cooperative Societies (respondent No.1 herein) to the managing committee of appellant No.1 – Bureau of Economics and Statistics Employees Cooperative Housing Society Limited to lease out the society's land in favour of appellant

No.2 – Viswas Vikas Consumers Mutually Aided Cooperative Stores Limited, Hyderabad could be cancelled without complying with the rules of natural justice is the main question, which arises for determination in this appeal filed by the appellants against order dated 4.12.2006 passed by the learned Single Judge in Writ Petition No.23960 of 2004.

Appellant No.1 is a co-operative society registered under the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the 1964 Act') and appellant No.2 is a co-operative society registered under the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 (for short, 'the 1995 Act').

On an application made by appellant No.1, respondent No.1 accorded permission under Rule 62 of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short, 'the Rules') for leasing out the society's land earmarked for shopping complex to appellant No.2 subject to the following terms and conditions:

a) The lease amount should be enhanced every year by lessor and agreed to and pay by lessee.
b) The use of premises will be only for consumers Coop. Stores, and the lessee should nor a private dealer be allowed to do business in the building on land taken on lease by Viswa Vikas Consumers' Stores.

Thereafter, appellant No.1 leased out the building constructed on the open land to appellant No.2 for a period of ten years. During the currency of lease, appellant No.1 approached respondent No.1 and succeeded in persuading him to accord permission for leasing out the society's land to appellant No.2 for a period of 30 years. This was conveyed to appellant No.1 by Divisional Cooperative Officer, Secunderabad Division (respondent No.3 herein), vide his letter dated 27.11.2003. That letter reads as under:

"GOVERNMENT OF ANDHRA PRADESH

COOPERATIVE DEPARTMENT

From:
Sri E.V. NARSIMHA REDDY
Divisional Co-operative Officer,
Secunderabad Division.

To
The President,
Bureau of Economics & Statistics Employees Cooperative Housing Society Ltd.

Rc.No.2450/03-Hsg. Dt.27.11.2003

Sir,

Sub: CHS – Bureau of Economics and Statistics ECHS Ltd. - Permission to transfer the leased site through Sale Deed in favour of Viswa Vikas Cons.M.A.C.Stores – Regarding.

Ref: Memo Rc.No.3849/98-Hsg., dt.17.9.2003 of the D.C.O., Hyderabad (U).

…

I invite your attention to the subject cited. In the reference the District Cooperative Officer, Hyderabad has permitted to lease out the Society's land as per terms and conditions stipulated by the Commissioner for Cooperation and Registrar of Co-operative Societies, Andhra Pradesh, Hyderabad. The Managing Committee of the Society is permitted to lease out the society's land in favour of the Viswa Vikas Consumer Mutually Aided Cooperative Stores Ltd., Hyderabad for a period of (30) years as per the terms and conditions stipulated by the Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad vide Rc.No.66254/95-Hsg-3, dated 26.3.1996 after expiry of the present lease period. The society may initiate the action accordingly.

Yours faithfully,
Sd/-
DIVISIONAL COOP. OFFICER
SECUNDERABAD DIVISION"

On receipt of the abovementioned communication, appellant No.1 extended the term of lease executed in favour of appellant No.2 for a period of 30 years commencing from 10.2.2005. This was conveyed by the President of appellant No.1 to the President of appellant No.2 vide letter dated 26.9.2003, the relevant portions of which are reproduced below:

"We are pleased to confirm that the District Co-operative Officer,

Hyderabad has accorded permission vide Memo Rc.No.3849/98/Hsg. Dated 17.9.2003 to our society to extend the lease for the land admeasuring 430 square yards presently under lease with you, where you have constructed a commercial building, situated at Navnirman Nagar, Road No.71, Jubilee Hills, Hyderabad-33 by another 30 years excluding over one year lease period left over under the lease agreement dated 10.2.1995. Therefore, from today onwards we have extended and granted a total lease of about 31 years in your favour for the land mentioned above. A copy of the letter in which the District Cooperative Officer, Hyderabad accorded permission for extension of lease for 30 years is enclosed for your records.

Therefore, we hereby grant and extend further lease for a period of 30 years for the land measuring 430 square yards bearing Mpl.No.8-2-293/82/BE/N-2, situated at Navnirman Nagar, Road No.71, Jubilee Hills, Hyderabad-33 over which land you have already constructed a commercial building ground plus two floors vide Mpl.Permit No.493/60 dated 25.4.1995.

We further confirm that the lease period is now extended up to 10.2.2035 and you are hereby entitled to raise loan for the purpose of your business by pledging the said property.

You may get the lease deed registered for 30 years after expiry of the present lease period on 10.2.1995 or you may get the lease deed registered for fresh 30 years and balance left over lease period of about 1 year 3 months i.e. for total 31 years 3 months as you may feel convenient as per the terms and conditions laid down in the earlier lease deed.

We further state that we are in principally agreeable for transfer of the site by sale after complying necessary formalities."

After about nine months of according permission to appellant No.1 to lease out the society's land in favour of appellant No.2 for a period of 30 years, respondent No.1 cancelled the same vide order dated 7.8.2004. That order reads as under:

"PROCEEDINGS OF THE COMMISSIONER FOR COOPERATION AND REGISTRAR OF COOPERATIVE SOCIETIES, A.P. HYDERABAD.

PRESENT: D. CHAKRAPANI, I.A.S.
Commissioner & RCS

Rc.No.22815/04/Hsg Date:07.08.2004

Sub: Housing – Bureau of Economics and Statistics Employees Housing Society Ltd., Hyderabad – Permission to transfer

leased site through sale deed in favour of Viswavikas Cons. Cooperative MACS Stores – Cancelled.

Read: 1) Lr.No.3849/98/Hsg. Dt.17.09.2003 of DCO, Hyderabad (Urban).
2) DLCO, Sec'bad Division Lr.No.2450/03/Hsg. dt.19.07.04.

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ORDER:-

In the circumstances explained by the DLCO, Secunderabad in the reference 2nd cited, permission to transfer the leased site of Bureau of Economics and Statistics Housing Society Ltd., Hyderabad in favour of Viswavikas Consumers Cooperative M.A.C. Society Ltd., om the forst read above is hereby cancelled.

Sd/-
Sd/- D. Chakrapani
COMMISSIONER & REGISTRAR"

The appellant challenged the aforementioned order in Writ Petition No.23960 of 2004 by contending that the action taken by respondent No.1 is wholly arbitrary and vitiated due to violation of the provisions of the 1964 Act and the rules of natural justice. In the affidavit filed by him, Shri Ch. Subba Rao, President of appellant No.1 averred that before cancelling the permission, respondent No.1 did not give the society notice and opportunity of hearing and that the order of cancellation is devoid of reasons. Shri Subba Rao raised several other grounds, but we do not consider it necessary to notice the same because, after hearing learned counsel for the appellants and the learned Government Pleader for Cooperation and perusing the record, we are convinced that order dated 7.8.2004 passed by respondent No.1 is vitiated due to violation of the rule of audi alterim partem and the learned Single Judge committed a serious error by declining to entertain the appellants' prayer.

A reading of the order under challenge shows that the learned

Single Judge did not advert to the factual matrix of the case and grounds taken by the appellants and dismissed the writ petition by recording the following order:

> "This writ petition is filed seeking Mandamus declaring the order dated 7.8.2004 in Rc.No.22815/04/Hsg of the first respondent as illegal and arbitrary.
>
> It appears that under the proceedings dated 17.9.2003, permission was granted to lease out the land of first petitioner in favour of second petitioner for a period of 30 years. The said lease was cancelled vide impugned order dated 7.8.2004. Aggrieved by the same, the present writ petition is filed.
>
> The contract/lease between the parties is in the realm of private contract and it is not a statutory lease/contract for the purpose of invoking provisions under Article 226 of the Constitution of India. No writ petition is maintainable against the impugned proceedings cancelling the lease granted earlier. The writ petition is misconceived and therefore, the same is liable to be dismissed."

In our opinion, the solitary reason assigned by the learned Single Judge for dismissing the writ petition filed by the appellants is legally unsustainable. A recapitulation of the facts shows that in exercise of the power vested in him under Rule 62 of the Rules, respondent No.1 accorded permission to appellant No.1 to lease out the land to appellant No.2 for a period of 10 years in the first instance and then for a period of 30 years. After about nine months, he cancelled the permission by relying on some report submitted by Divisional Co-operative Officer, Secunderabad (respondent No.3) that appellant No.1 violated the conditions specified in communication dated 26.3.1996. This action will be deemed to have been taken by respondent No.1 in exercise of the implied power vested in him under Rule 62 of the Rules. Therefore, the appellants could not have been non-suited by the learned Single Judge by

assuming that they were seeking to enforce a private contract.

We shall now consider whether order dated 7.8.2004 passed by respondent No.1 is vitiated due to violation of the rules of natural justice. A reading of that order makes it clear that respondent No.1 took punitive action against the appellants on the basis of some report submitted by respondent No.3 with the finding that appellant No.1 had violated the conditions specified in letter dated 26.3.1996 sent by respondent No.1 to District Cooperative Officer, Hyderabad and letter dated 2.8.1996 sent by Deputy Registrar of Cooperative Societies (Housing), Hyderabad to the President of appellant No.1.

During the course of hearing, we enquired from the learned Government Pleader for Cooperation whether order dated 7.8.2004 was preceded by an enquiry made in accordance with the rules of natural justice, whether any action oriented notice and opportunity of hearing was given to the appellants and whether copy of the report submitted by respondent No.3 was supplied to them with an opportunity to explain their position. In reply, the learned Government Pleader fairly stated that order impugned in the writ petition was passed without holding an enquiry in consonance with the rules of natural justice. He also conceded that copy of the report of respondent No.3 was not made available to the appellants and they were not given opportunity to explain their position.

In view of the candid admission made by the learned Government Pleader, it must be held that the decision of respondent No.1 to cancel the permission accorded to appellant No.1 to lease out the land of the society to appellant No.2 for 30 years is liable to be nullified on the ground of violation of the rule of audi alterim partem. There cannot be any doubt that the permission accorded by

respondent No.1 to the managing committee of appellant No.1 to lease out the land to appellant No.2 for a period of 30 years and consequential action taken by appellant No.1 created a valuable right in favour of both the appellants and they could not have been deprived of that right without being heard in the context of adverse finding recorded by respondent No.3. To put it differently, respondent No.1 could not have cancelled the permission without complying with the basics of natural justice.

The rules of natural justice are multi-faceted. Different dimensions of the rules of natural justice have been applied by the Courts for striking down administrative/executive actions. One of the most accepted and recognized rules of natural justice is that no person shall be condemned unheard. The expansive meaning given to this rule, which is also described as the rule of audi alteram partem means that before any action is taken by a public authority against an individual or an order is made which visits an individual with civil consequences, the person concerned must be given an action-oriented notice, he must be informed of the material sought to be used against him, a reasonable opportunity be given to him to represent his cause and to controvert the material sought to be used against him, the authority concerned must objectively consider his explanation/ reply/representation and assign reasons for not accepting the same. The requirement of recording of reasons and communication thereof to the affected person has been treated as an integral part of the duty cast on every quasi-judicial and even administrative authority, which is entrusted with the task of deciding lis between the parties or passing an order adversely affecting the rights of the individuals.

The above-stated proposition has been culled out by us from

the judgments of the Supreme Court in State **of Orissa v. Dr. Binapani Dei**[1], **A.K. Kraipak v. Union of India**[2], **S.L. Kapoor v. Jagmohan**[3], **Swadeshi Cotton Mills. v. Union of India**[4], **Maneka Gandhi v. Union of India**[5].

We are further of the view that order impugned in the writ petition is liable to be annulled because the same does not satisfy the requirement of a "speaking order". The necessity of recording reasons by the quasi judicial and even administrative authorities and communication thereof to the affected person has been highlighted in several judgments of the Supreme Court including **Harinagar Sugar Mills v. Shyam Sundar**[6], **M.P.Industries Limited v. Union of India**[7], **Bhagat Raja v. Union of India**[8], **Mahavir Prasad Santoshkumar v. State of U.P.**[9], **Travancore Rayons v. UOI**[10], **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**[11], **Messrs Siemens Engineering & Manufacturing Company v. Union of India**[12], **S.N. Mukherjee v. Union of India**[13], **Charan Singh v. Healing Touch Hospital**[14] **State of Punjab v. Bagh Singh**[15], **State of Orissa v. Dhaniram Luhar**[16], **State of Rajasthan v. Sohan Lal**[17], **Cyril Lasrado v. Juliana Maria Lasrado**[18], **Mangalore Ganesh Beedi Works v. CIT**[19] and **Manorama Sachan v. Lucknow Development Authority**[20].

In **S.N. Mukherjee v. Union of India** (supra) the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of

judicial precedents on the subject and laid down the following proposition:

> "… Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh** (supra) the Supreme Court observed:

> "Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal** (supra) the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

> "The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. … The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. …"

In **Cyril Lasrado v. Juliana Maria Lasrado** (supra) the Supreme Court considered the same question and held as under:

> "… Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**[21], a Full Bench of the Gujarat High Court made a lucid

exposition of law on the subject and we can do no better than to reproduce the relevant paragraphs of that judgment, which are as under:

> "There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in Jaswant Sugar Mills's case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:
>
> (1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
>
> (2) It declares rights or imposes upon parties obligations affecting their civil rights; and
>
> (3) The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.
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> Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court

> under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

The offshoot of the above discussion is that order dated 7.8.2004 passed by respondent No.1 is vitiated due to violation of more than one facets of the rules of natural justice and the learned Single Judge committed a serious error by dismissing the writ petition.

In the result, the appeal is allowed. The order of the learned Single Judge as also order dated 7.8.2004 passed by respondent No.1 are set aside with liberty to the latter to pass fresh order in accordance with law and after complying with the rules of natural justice. If respondent No.1 decides to pass fresh order in the matter, then he should do so within a period of three months from the date of receipt of a copy of this order. Till then, the parties shall maintain status quo in relation to the property which was leased out by

appellant No.1 to appellant No.2.

As a sequel to the allowing of the writ appeal, WAMP No.982 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

June 25, 2007

svs

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[1] AIR 1967 SC 1269
[2] AIR 1970 SC 150
[3] AIR 1981 SC 136
[4] AIR 1981 SC 818
[5] AIR 1978 SC 597
[6] AIR 1961 SC 1669
[7] AIR 1966 SC 671
[8] AIR 1967 SC 1606
[9] AIR 1970 1302
[10] AIR 1971 SC 862
[11] AIR 1976 SC 437
[12] AIR 1976 SC 1785
[13] AIR 1990 SC 1984
[14] (2000) 7 SCC 668
[15] (2004) 1 SCC 547
[16] (2004) 5 SCC 568
[17] (2004) 5 SCC 573

[18] (2004) 7 SCC 431

[19] (2005) 5 SCC 75

[20] (2005) 9 SCC 425

[21] AIR 1970 Guj. 1